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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

JEAN NELSON,

Plaintiff,

vs.

**FISKARS BRAINDS, INC., d.b.a
GERBER LEGENDARY BLADES,**

Defendant.

Case No. 3:14-CV-00685-SB

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFF'S
OBJECTION TO DEFENDANT'S
BILL OF COSTS**

Plaintiff objects to Defendant's Bill of Costs in its entirety because awarding costs to Defendant would have a chilling effect on future employment claims. The Court has discretion to deny an award of costs when such an award would have a chilling effect on future claims that seek to vindicate civil rights. *Escriba v. Foster Poultry Farms, Inc.*, 743 F 3d 1236, 1247-49 (9th Cir 2014); *Association of Mexican American Educators v. State of California*, 231 F 3d 572, 591-593 (9th Cir 2000). "Appropriate reasons for denying costs include: (1) the substantial public importance

of the case, (2) the closeness and difficulty of the issues in the case, (3) the chilling effect on future similar actions, (4) the plaintiff's limited financial resources, and (5) the economic disparity between the parties. *Id.* at 592-93. This is not 'an exhaustive list of 'good reasons' for declining to award costs' but rather a starting point for analysis." *Escriba*, 743 F 3d at 1248 (internal citation omitted).

Plaintiff was terminated for attendance by Defendant after being in a non-work related automobile accident. Plaintiff alleged violations under the Family Medical Leave Act, the Oregon Family Leave Act, and for wrongful termination for being fired for exercising an important job-related right. Plaintiff filed her claims in good faith based upon recognized case law in other Circuits in a case that appears to be a case of first impression in this Circuit. *See, Hodgins v. General Dynamics Corp.*, 144 F 3d 551 (1st Cir 1998); *Caldwell v. Holland of Texas, Inc.*, 208 F 3d 671 (8th Cir 2000); *Phillips v. Matthews*, 547 F 3d 905 (8th Cir 2008). Plaintiff's claims were ultimately dismissed on summary judgment.

Awarding costs against a civil rights claimant under such circumstances would have a chilling effect on future civil rights claims because civil rights claimants would be deterred from bringing such claims out of fear of being exposed to bills of cost.

DATED this 16th day of October, 2015.

/s/ CHRISTOPHER A. SLATER

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Of Attorneys for Plaintiff